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d.b.a Blue Sky Wellness Studio*

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF OREGON**  
**PORTLAND DIVISION**

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BRIDGIT BEASLEY, P.C. d/b/a  
BLUE SKY WELLNESS STUDIO

Plaintiff,

v.

BLUE SKY OF PORTLAND, LLC.

Defendant.

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Civil Action No.: \_\_\_\_\_

COMPLAINT FOR  
TRADEMARK INFRINGEMENT

JURY TRIAL REQUESTED

Plaintiff, Bridgit Beasley, P.C. d/b/a Blue Sky Wellness Studio ("Plaintiff"), alleges as follows:

**Parties**

1. Plaintiff, at all times relevant to this matter, is an Oregon Professional Corporation with its principal place of business at 3944 N Mississippi Avenue, Portland, Oregon, 97227.

2. Upon information and belief, Defendant Blue Sky of Portland, LLC. is a limited liability company organized under the laws of the State of Oregon with a principal place of business at 729 SE Powell Boulevard, Portland, Oregon 97202.

### **Jurisdiction and Venue**

3. This is an action arising under the laws of the United States, Oregon Statutory Law, and the Common Law. This Honorable Court has jurisdiction to hear all issues presented by this matter pursuant to 28 U.S.C. §1331 (federal question), 28 U.S.C. §1338 (acts of Congress relating to trademarks and unfair competition), 15 U.S.C.S. §1125 (false designation of origin, false descriptions, and dilution forbidden) and 28 U.S.C. §1367 (supplemental jurisdiction for related state law claims).

4. Venue is proper in this district pursuant to 28 U.S.C. §1391(b).

### **Facts**

5. Plaintiff is a well-known provider of health and wellness related services, with clients situated throughout the Portland metropolitan area and beyond.

6. Plaintiff has used “Blue Sky Wellness” as part of its name in trade continuously since at the latest, May 2007.

7. Plaintiff has promoted itself using “Blue Sky Wellness” through brochures, mailings, advertisements, and through its web site at [www.blueskyportland.com](http://www.blueskyportland.com).

8. Plaintiff is the owner of U.S. Application No. 86827868 (the “Application”) for “Blue Sky Wellness Studio” for use in connection with acupuncture; Alternative medicine

services; Bodywork therapy services, namely, Craniosacral therapy; Chiropractics; Consulting in the field of health and wellness to bring about personal happiness; Consulting services in the field of health; Consulting services in the fields of health and nutrition; Counseling services in the fields of health, nutrition and lifestyle wellness; Health care services, namely, wellness programs; Health spa services for health and wellness of the body and spirit; Holistic health services; Massage therapy services; Medical services in the field of Naturopathic Primary Care; Physical rehabilitation; Providing a website featuring information about health, wellness and nutrition; Providing a website featuring information concerning alternative health and healing; Providing health information; Providing healthcare information; Providing healthy lifestyle and nutrition services, namely, personal assessments, personalized routines, maintenance schedules, and counseling; Providing information, news and commentary in the field of nutrition, health and wellness; Stress reduction therapy. A copy of the application information retrieved from the U.S. Patent and Trademark Office's online public records is attached hereto as Exhibit A.

9. The adoption, use, and registration of "Blue Sky Wellness Studio" and blueskyportland.com was in good faith and was the first use of those marks in association with, *inter alia*, health and wellness services and/or alternative medicine.

10. Plaintiff has spent, and continues to spend significant time, effort, and money in the promotion and advertisement of its services identified by and distinguished by its marks. By reason of such substantial promotion and advertising and the high quality of its services associated with said marks, Plaintiff has attained and now enjoys valuable goodwill and enviable reputation in the marketplace with respect to its marks and services. The public has come to

know, rely upon, and associate Plaintiff's services with, and to recognize Plaintiff's services with its marks.

11. Plaintiff's continuous use of Blue Sky Wellness Studio and blueskyportland.com in commerce entitles Plaintiff to trademark protection.

**Defendant's Infringing Activities**

12. Upon information and belief, in April 2015, Defendant registered as a Limited Liability Company with the Oregon Secretary of State. At around the same time, Defendant registered www.blueskyofportland.com with a domain name registry service.

13. Upon information and belief, Defendant uses "Blue Sky Wellness Center" on its advertising, its building, and its website.

14. Defendant offers itself, *inter alia*, as a provider of "medicine" and health related services as a medical marijuana dispensary.

15. On its website, Defendant states "Here at Blue Sky, we pride ourselves on the quality of our medication, the attention we give to patients, and the ability to go the *extra mile* for you." Retrieved from www.blueskyofportland.com on November 20, 2015. Further, Defendant advertises consulting services associated with medical marijuana.

16. Upon information and belief, Defendant had notice of Plaintiff's use of "Blue Sky Wellness Studio" and www.blueskyportland.com prior to commencing business under "Blue Sky Wellness Center" and www.blueskyofportland.com.

17. "Blue Sky Wellness Center" and www.blueskyofportland.com are only slight variations of Plaintiff's marks having confusingly similar meanings and appearance.

18. Defendant's use of "Blue Sky Wellness Center" and [www.blueskyofportland.com](http://www.blueskyofportland.com), is likely to cause confusion among the public and customers as to the services available from Plaintiff and is likely to cause customers to believe that Defendant's services are endorsed by, sponsored by, affiliated with, or in some way connected to Plaintiff.

19. Defendant's use of "Blue Sky Wellness Center" and [www.blueskyofportland.com](http://www.blueskyofportland.com), has caused actual confusion among the public and Plaintiff's customers.

20. Defendant's use of "Blue Sky Wellness Center" and [www.blueskyofportland.com](http://www.blueskyofportland.com), will continue to cause actual confusion among the public and Plaintiff's customers, and unless restrained by this Honorable Court, serious and irreparable injury to Plaintiff and the goodwill associated with Plaintiff's marks.

21. Plaintiff's remedies at law are not adequate to compensate for the injury caused by Defendant's actions because Plaintiff is entitled to be in exclusive control of its marks as used in association with alternative medicine and health and wellness associated therapeutic services in order to prevent the likelihood that customers may be confused, mistaken, or deceived into believing that the services and products sold by Defendant in some way originate with Plaintiff, or are endorsed by, sponsored by, affiliated with, or in some way connected with Plaintiff. As long as Defendant is allowed to continue the acts complained of, Plaintiff's reputation is at Defendant's mercy.

22. Plaintiff is entitled to recover all profits derived from Defendant's acts of infringement, unfair competition, and unfair trade and business practices, including treble damages, together with all attorney's fees and costs incurred by Plaintiff.

23. By letter dated July 17, 2015, Plaintiff advised Defendant that its use of Defendant's use of "Blue Sky Wellness Center" and [www.blueskyofportland.com](http://www.blueskyofportland.com), was causing confusion among Plaintiff's customers, damaging Plaintiff's business reputation, and likely causing Plaintiff to lose income. A true and complete copy of said letter is attached hereto as Exhibit B. Nevertheless, Defendant continued to use "Blue Sky Wellness Center" and [www.blueskyofportland.com](http://www.blueskyofportland.com), with knowledge of the damage said use was causing Plaintiff. As such, Defendant's continued acts of infringement are knowing, willful, egregious and in disregard of Plaintiff's rights.

24. Defendant acknowledged that it was required to change its name by way of a Facebook post dated October 9, 2015. Said post states:

We need a NEW NAME and want YOUR HELP! Stop by and give us your best idea for a name of our shop and if yours is selected you win an ounce\*!

\*\*First 250 entries considered. If winner is recreational, ounce will be distributed over four days for \$.01/quarter, per daily limit\*\*

You got this.

(Retrieved from <https://www.facebook.com/blueskyoforegon> on November 20, 2015.)

As such, Defendant's continued acts of infringement are knowing, willful, egregious and in disregard of Plaintiff's rights.

25. By and through counsel, by letter dated October 30, 2015, Plaintiff notified Defendant for a second time that Defendant's continued infringement was causing Plaintiff harm. Defendant has not responded to this letter in any way. A true and complete copy of said letter is attached hereto as Exhibit C.

**COUNT I**

**Federal Unfair Competition Violations**

25. Plaintiff incorporates paragraphs 1-22 of this Complaint as though fully set forth herein.

26. Defendant's actions constitute unfair competition under Section 43(a)(1) of the Lanham Act 15 U.S.C. § 1125(a)(1).

**COUNT II**

**State and Common Law Trademark Infringement**

23. Plaintiff incorporates paragraphs 1-22 of this Complaint as though fully set forth herein.

24. Defendant's actions described herein constitute infringement of Plaintiff's trademark rights in violation of ORS 647.095 and Oregon Common Law.

**COUNT III**

**State Unlawful Trade and Business Practices**

27. Plaintiff incorporates paragraphs 1-22 of this Complaint as though fully set forth herein.

28. Defendant's actions constitute unlawful business and trade practices in violation of ORS § 646.608 and Oregon Common Law.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff Bridgit Beasley, P.C. d/b/a Blue Sky Wellness Studio prays this Honorable Court declare and a judgment be entered as follows:

A. That Defendant be held liable under each claim for relief set forth in Plaintiff's complaint;

B. That Defendant's trademark infringement, unfair competition, and unlawful business and trade practices have been willful;

C. That Defendant, its agents, servants, employees, attorneys, successors, assigns, and all other persons, firms and corporations acting in concert or in participation with Defendant be permanently enjoined from:

(1) using "Blue Sky Wellness Center" and blueskyofportland.com or a colorable imitation thereof;

(2) using in any manner any other mark that is confusingly similar to Plaintiff's marks;

(3) infringing Plaintiff's trademark rights identifies herein; and

(4) committing unfair competition and unfair business practices as detailed herein;

D. That Defendant be enjoined from filing or required to withdraw, cancel or abandon any and all registrations or applications to register any trademarks, trade names or business names containing "Blue Sky Wellness," or any other colorable imitation or confusingly similar variation of Plaintiff's marks.



E. That Defendant be required to transfer the infringing blueskyofportland.com domain registration to Plaintiff;

F. That Defendant file with this Honorable Court and serve on Plaintiff in accordance with 15 U.S.C. §1116 within 30 days after service on Defendant of such injunction, a report in writing and under oath, setting forth in detail the manner and form in which it has complied with this injunction;

G. That in accordance with 15 U.S.C. § 1118, Defendant deliver to Plaintiff for destruction or other disposition, all goods, labels, signs, prints, packages, wrappers, advertisements, business forms, letterheads and promotional materials bearing or displaying any marks or other term similar to Plaintiff's marks as to be likely to cause confusion, deception or mistake, in Defendant's possession, custody or control (and to recall for such purpose any such products and materials in possession, custody or control of any other person), as well as any reproduction, counterfeit, copy or colorable imitation thereof;

H. That Defendant be required to pay to Plaintiff, all damages Plaintiff has suffered and will suffer by reason of Defendant's unlawful acts herein, together with prejudgment interest from the date of accrual thereof;

I. That defendant be required to account for and pay to Plaintiff all profits wrongly derived by Defendant through its unlawful acts set forth herein, together with prejudgment interest from the date of accrual thereof;

J. That because of the willful nature of Defendant's infringement, and pursuant to 15 U.S.C. §1117, the court enter a judgment for Plaintiff for three times the amount of profits or damages, whichever is higher;

K. That Defendant be required to pay Plaintiff its reasonable attorney's fees and disbursements incurred herein, pursuant to 15 U.S.C. § 1117, ORS §646.638, and the equity powers of this Honorable Court;

L. That Defendant be required to pay to Plaintiff the costs of this action;

M. That, pursuant to ORS § 646.638, the Court award punitive damages against Defendant for its willful and egregious deception of customers, infringement of Plaintiff's rights and unlawful trade and business practices; and

N. That this Honorable Court award Plaintiff such other and further relief as this Honorable Court deems just and appropriate.

**JURY DEMAND**

Pursuant to Fed. R. Civ. P 38, Plaintiff demands a jury trial on all issues triable to a jury.

Dated: December 14, 2015

Respectfully Submitted,

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